

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

3 IN RE: . Chapter 11
4 . Case No. 24-10070 (BLS)
TERRAFORM LABS PTE. LTD., .
5 .
6 .
7 Debtor. . Courtroom No. 1
8 . 824 Market Street
9 . Wilmington, Delaware 19801
10 .
11 . Wednesday, January 31, 2024
12 . 2:00 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

11 | APPEARANCES:

12 For the Debtor: Ronit Berkovich, Esquire
13 Jessica Liou, Esquire
14 F. Gavin Andrews, Esquire
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, New York 10153

- and -

19 (APPEARANCES CONTINUED)

20 | Audio Operator: Ian Willoughby, ECRO

21 Transcription Company: Reliable
22 The Nemours Building
23 1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302) 654-8080
Email: gmatthews@reliable-co.com

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1 APPEARANCES (CONTINUED) :

2 For the U.S. Trustee: Linda Richenderfer, Esquire
3 UNITED STATES DEPARTMENT OF JUSTICE
4 OFFICE OF THE UNITED STATES TRUSTEE
5 J. Caleb Boggs Federal Building
6 844 King Street
7 Suite 2207, Lockbox 35
8 Wilmington, Delaware 19801

9
10 For the U.S.
11 Securities and
12 Exchange Commission: Therese A. Scheuer, Esquire
13 Roger Landsman, Esquire
14 UNITED STATES SECURITIES AND
15 EXCHANGE COMMISSION
16 100 F Street, NE
17 Washington, DC 20549
18
19
20
21
22
23
24
25

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1 (Proceedings commenced at 2:12 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 Ms. Berkovich, good afternoon. Good to see you.

5 MS. BERKOVICH: Nice to see you too, Your Honor.

6 Good afternoon. For the record, Ronit Berkovich from Weil
7 Gotshal & Manges on behalf of the debtor, Terraform Labs Pte.
8 Ltd.

9 I'm joined by my colleagues Jessica Liou, Gavin --

10 THE COURT: Welcome.

11 MS. BERKOVICH: -- Gavin Andrews, Jared Friedmann,
12 and Christine Calabrese, as well as Zach Shapiro from the
13 Richards Layton firm.

14 THE COURT: Good to see you.

15 MS. BERKOVICH: Also in the courtroom today is
16 Mark Califano from Dentons, which is the debtor's proposed
17 special litigation counsel.

18 THE COURT: Mr. Califano, it is good to see you
19 again. Welcome.

20 MR. CALIFANO: Nice to see you, Your Honor.

21 MS. BERKOVICH: We wanted to thank the Court for
22 making time for us this afternoon. We also wanted to thank
23 Ms. Richenderfer and Ms. Leamy from the Office of the United
24 States Trustee. We've worked with the Office of the U.S.
25 Trustee in respect to questions and comments that they've had

1 about the debtor's business and the first day motions and I'm
2 pleased to report that we believe we've raised all of the
3 U.S. Trustee's concerns raised for purposes of today's
4 hearing --

5 THE COURT: Okay.

6 MS. BERKOVICH: -- and we will, of course,
7 continue to work with the U.S. Trustee during the course of
8 this case.

9 THE COURT: Very good.

10 MS. BERKOVICH: We also received comments from the
11 SEC, with respect to the first day motions and we believe
12 we've resolved all of their concerns, again, today, for
13 purposes of these hearings.

14 THE COURT: For today.

15 (Laughter)

16 MS. BERKOVICH: For today.

17 THE COURT: We live one day at a time.

18 MS. BERKOVICH: So we hope and expect to have a
19 consensual hearing today.

20 We will submit revised orders with the Court
21 reflecting those terms and Ms. Liou will address some of them
22 as part of her presentation.

23 THE COURT: Sure. I think that there was an
24 inquiry with respect to scheduling, as well.

25 Did the Court give you a second day hearing?

1 MS. BERKOVICH: I believe we have March 4th --

2 THE COURT: Very good.

3 MS. BERKOVICH: -- at 1:30 or 2:30 -- 2:30 p.m.

4 THE COURT: Very good.

5 MS. BERKOVICH: Thank you for accommodating us.

6 THE COURT: Happy to oblige.

7 MS. BERKOVICH: So we have four motions before the
8 Court today on first day motions. My colleague Gavin Andrews
9 will present the Epiq claims and noticing agent retention
10 application at Docket 17, as well as the creditor matrix
11 motion at Docket 11, and Ms. Liou will present the wages
12 motion at Docket 20 and the Treasury Management motion at
13 Docket 21.

14 Before I begin, I'd like to make a few more
15 introductions to the Court. Your Honor, we have with us in
16 court today, the debtor's CEO Chris Amani. Mr. Amani is our
17 first day declarant.

18 THE COURT: He's our declarant today?

19 MS. BERKOVICH: Yes --

20 THE COURT: Welcome, sir.

21 MS. BERKOVICH: -- and he is available if Your
22 Honor has any questions for him or any parties do.

23 THE COURT: I have read the declaration several
24 times. I have reluctant to ask any particular questions.

25 (Laughter)

1 MS. BERKOVICH: You will become an expert in time.

2 THE COURT: But I am prepared to be educated.

3 MS. BERKOVICH: That is -- we will try to educate
4 you.

5 And we also have in the courtroom, Michael Leto,
6 who's a managing director at Alvarez & Marsal --

7 THE COURT: And he is a separate declarant for us,
8 as well, today.

9 Mr. Leto, good to see you.

10 MS. BERKOVICH: If there are no objections, I'd
11 like to move into evidence, first, the declaration of Mr.
12 Amani, which is filed at Docket 18.

13 THE COURT: Very good.

14 I would ask, are there any objections to the
15 admission of Mr. Amani's declaration for purposes of the
16 relief sought at this hearing? And given some of counsel's
17 comments and the issues that are, I think, previewed in
18 his declaration, I would reiterate my standard approach,
19 which is to emphasize that when relief -- when a first day
20 declaration is admitted, it's essentially on limited or no
21 notice to parties and it is the Court's position that it is
22 exclusively for the relief that's being sought today and to
23 the extent that in the future, relief is being sought, it's
24 not deemed or seemed to be conclusive findings of fact, et
25 cetera, by the Court.

1 I think that's obvious to all parties, but since
2 the issue has been raised to me at least once or twice, and I
3 think this would be an appropriate important to note that,
4 again, Mr. Amani's testimony and this extensive description
5 of the nature of the business and the enterprise are being
6 offered today as part of the factual predicate for the relief
7 sought.

8 Are there any objections?

9 MS. RICHENDERFER: Your Honor --

10 THE COURT: Ms. Richenderfer, good afternoon.
11 Good to see you.

12 MS. RICHENDERFER: Good afternoon, Your Honor.
13 Linda Richenderfer on behalf of the United States Trustee.

14 No objection. I appreciate the comments from Your
15 Honor, I just want to make clear that we are reserving the
16 right, perhaps, to cross-examine or raise issues with respect
17 to the same relief when it's sought at the second day
18 hearing, for final orders. I just wanted to emphasize that.

19 THE COURT: And I think your reserving
20 anticipates, precisely, my admonition, which is that the
21 second day hearing is a completely new hearing and the record
22 is developed for that purpose.

23 Ms. Scheuer, good to see you.

24 MS. SCHEUER: Good afternoon, Your Honor. For the
25 record, Therese Scheuer for the SEC.

1 The SEC would also just like to make the same
2 reservation for cross-examine Mr. Amani at the second day --

3 THE COURT: That reservation is noted.

4 MS. SCHEUER: Thank you.

5 THE COURT: All right. In the absence of any
6 observe acquisition, Mr. Amani's declaration is admitted.

7 (Amani Declaration received in evidence)

8 THE COURT: Is there any party that intends or
9 expects today to cross-examine Mr. Amani regarding the
10 contents of his declaration?

11 (No verbal response)

12 THE COURT: Very well. Again, for purposes of
13 today, Mr. Amani's declaration is admitted, without
14 contradiction.

15 Ms. Berkovich, you may proceed.

16 MS. BERKOVICH: Thank you, Your Honor.

17 And if there are no objections, we would like to
18 move into evidence the declaration of Mr. Leto, filed at
19 Docket 22.

20 THE COURT: And, again, I would ask, are there any
21 objections to the admission of Mr. Leto's declaration,
22 subject to the same considerations the Court noted a moment
23 ago?

24 (No verbal response)

25 THE COURT: Very well, Mr. Leto --

1 || Same?

2 MS. SCHEUER: Your Honor, I would just make the
3 same reservation.

4 THE COURT: Of course.

5 And that reservation is noted both, for the SEC,
6 the United States Trustee, and, frankly, any other party in
7 interest that wishes to be heard at the second day hearing or
8 thereafter.

11 (Leto Declaration received in evidence)

15 (No verbal response)

16 THE COURT: Very well, Mr. Leto's declaration is
17 admitted, likewise, without contradiction.

18 You may proceed.

19 MS. BERKOVICH: Thank you.

20 Your Honor, it was a team effort to get us here
21 today. There are a number of people in the courtroom and
22 joining us via dial-in, who have put hard work into getting
23 this case together. So those are all the introductions and
24 with that, I would like to present some slides with some
25 background.

1 THE COURT: Before we do that, I would just like
2 to check in with the Office of the United States Trustee.

3 And Ms. Richenderfer, good afternoon. I, as
4 always, appreciate your office's engagement with the debtor
5 in advance and I'm certainly pleased to hear that, at least,
6 thus far, matters seem to be resolved for purposes of today.

7 Has your office sent out a notice for a formation
8 meeting?

9 MS. RICHENDERFER: Yes, Your Honor, we have.

10 You may have noticed if you look at the petition,
11 it was a rather limited list of creditors and we also had a
12 lot of bouncebacks with the email addresses, so we have since
13 been provided by debtor with new additional email addresses
14 and I believe debtor intends to file an amended list of
15 creditors, adding at least two more.

16 We have been able to already send out
17 questionnaires to the additional creditors and use the
18 revised email addresses we received. We have asked for
19 responses by Thursday for the first group and Friday for the
20 second group. You know, I'm going to wait and see if we
21 receive anything. That would give us plenty of time before
22 the second day hearing, but we are looking to form a
23 committee, of course --

24 THE COURT: Very good.

25 MS. RICHENDERFER: -- we just don't know what type

1 of response we may receive.

2 THE COURT: Well, and, again, the timing, as
3 outlined by Ms. Berkovich, certainly affords a sufficient
4 opportunity to get through that process and we'll reconvene
5 on the 4th, if not in advance of that, so if there are
6 parties interested, then you'll do your thing.

7 MS. RICHENDERFER: That's correct, Your Honor.

8 And there were various, I think, potentially
9 gatekeeping issues, but those are for -- we don't need to
10 address those today, but Your Honor may have guessed at one
11 or two of them: What are we doing with a Singapore
12 corporation in Delaware? And, in addition, where is the --
13 I'm going to forget the exact language, and I should remember
14 it because I was on the LTL team -- but the immediate
15 financial --

16 THE COURT: Distress?

17 MS. RICHENDERFER: -- distress of the debtor at
18 this point in time. I know that Judge Walrath, at one point
19 in time, wrote about a company facing a verdict. I think
20 it's been, since then, that the Third Circuit has ruled in
21 LTL, going through circumstances where there was the two-step
22 process, but there was also the issues concerning the
23 liability itself.

24 And so, you know, we'll wait to see what evolves
25 here and there's a history here with this company and that's

1 why we have the SEC counsel here with us today. And, I mean,
2 these are points that I have raised in my conversations with
3 Mr. Shapiro. Again, I don't think that they necessarily need
4 to be dealt with today. I only raised them because -- and I
5 forgot to check the name of the case -- Your Honor had a case
6 before Your Honor where we had an issue about corporate
7 authority to file the bankruptcy case in the first
8 instance --

9 THE COURT: Yeah.

10 MS. RICHENDERFER: -- where Your Honor eventually
11 ruled they did not have authority, so the Court didn't have
12 jurisdiction over the case.

13 THE COURT: That was the PhysIQ case --

14 MS. RICHENDERFER: Thank you.

15 THE COURT: -- and I specifically found that I had
16 jurisdiction. They just lacked any corporate authority to
17 file the petition.

18 (Laughter)

19 MS. RICHENDERFER: Excuse me, Your Honor. I got
20 it backwards. You're right, they lacked corporate authority.
21 That's right. And I guess I just took it a step further,
22 though, because they didn't have corporate authority, they
23 were out of the court.

24 But the concern there had been, if Your Honor
25 remembers, the interim first day order regarding the DIP and

1 the way we view it, I don't think that there's any interim
2 relief that's --

3 THE COURT: Well, there's the Treasury Management
4 motion, but there's not a borrowing and there's not the
5 granting of liens and the other mechanics.

6 But if we go much further down this path,
7 Ms. Berkovich is likely to file a brief and, otherwise,
8 filibuster.

9 MS. RICHENDERFER: Well, and --

10 (Laughter)

11 THE COURT: You may consider the shot over the bow
12 made.

13 MS. RICHENDERFER: Well, and, Your Honor, I just
14 wanted to give everyone a heads-up officially. And it is for
15 the very reason that we don't see the relief as being granted
16 today as, in any way, affecting the position of creditors
17 vis-a-vis, each other as what happened in PhysIQ once we had
18 the -- the secured lender ended up with a lien on the assets.

19 THE COURT: So noted.

20 MS. RICHENDERFER: And, in fact, I think it was
21 almost a year ago. I remember it was February in which we
22 had that last year.

23 But, just, we didn't want that to go unnoticed,
24 Your Honor, and I'm sure that came to your attention in
25 reading the first day declaration. Thank you.

1 THE COURT: All right. We're spending a lot of
2 time talking about stuff we're not doing today.

3 MS. BERKOVICH: Yes. Yes.

4 I thank Ms. Richenderfer for raising those issues
5 and I actually think during the course of my presentation,
6 I'll have some answers and it'll be pretty clear why we're
7 here and why we should be here.

8 So we have a presentation. We did email it to
9 chambers. Jesse Kitnick has it on his computer and we can
10 put it up on the screen and they also have a hard copy.

11 THE COURT: I'll take a hard copy if you've got
12 it.

13 MS. BERKOVICH: Okay.

14 THE COURT: Thanks.

15 And can we give Mr. Kitnick privileges and we can
16 move forward.

17 I have observed before that the practice has
18 evolved to the point where bankruptcy lawyers can't order
19 appetizers without a PowerPoint.

20 (Laughter)

21 MS. BERKOVICH: Yes. We were holdouts for a
22 while, but I think people now --

23 THE COURT: I blame Kirkland.

24 MS. BERKOVICH: -- expect a presentation, so give
25 the people what they want, right. That's what we're here

1 for.

2 THE COURT: I think I'm "the people," and nobody
3 asked.

4 (Laughter)

5 MS. BERKOVICH: Okay. Well, noted. Noted.

6 Hopefully, you'll find this illuminating -- fewer
7 words than the 40-point declarations, for sure. We'll start
8 with the roadmap overview. We'd like to tell the Court who
9 we are, why we're here, and where we're going.

10 So, starting, who is TFL? Terraform Labs, or TFL,
11 is a company specializing in the development of open source
12 software and blockchain technology.

13 I'm just waiting a moment for the PowerPoint to
14 catch up.

15 THE COURT: That's okay.

16 MS. BERKOVICH: Its primary business is developing
17 and supporting the software used to create and run the
18 current Terra blockchain network, which we generally refer to
19 as the "Terra blockchain," --

20 THE COURT: Uh-huh.

21 MS. BERKOVICH: -- and numerous tools, protocols,
22 and applications that operate on the Terra blockchain, making
23 transactions on the network easier, faster, and more user
24 friendly.

25 In early May 2022, TFL's initial blockchain, which

1 we call "Terra classic," failed on the collapse of its native
2 tokens, Luna Classic and UST. After TFL consulted with
3 members of the Terra community, and with their support, TFL
4 relaunched the new Terra blockchain in May of 2022,
5 introduced an entirely new token, which we'll call "Luna,"
6 and AirDropped those into the wallets of the holders of Luna
7 Classic at the time of the Luna Classic collapse.

8 THE COURT: Uh-huh.

9 MS. BERKOVICH: The Terra community, which you'll
10 hear a lot about today, includes hundreds of thousands of
11 individual users, as measured by wallets, who participate on
12 the Terra blockchain in various capacities. The Terra
13 community is committed to the Terra blockchain and TFL is
14 deeply committed to the community.

15 So, TFL's, like, primary business purpose is to
16 continue to maintain and improve the Terra blockchain,
17 thereby attracting additional users to participate on it and
18 developers to build useful applications on it. To that end,
19 TFL has introduced and is in the process of creating several
20 new, exciting software applications that we'll talk about
21 today.

22 Let's talk about what TFL is not, because there've
23 been a lot of crypto cases out there and you'll find that
24 this company is different from --

25 THE COURT: From the one downstairs?

1 MS. BERKOVICH: Yes, exactly.

2 And maybe fewer juicy bankruptcy issues, and maybe
3 sorry to disappoint, but I think that actually makes it
4 easier.

5 So TFL does not currently issue or sell digital
6 tokens for value. The SEC's action does involve TFL's sale
7 of tokens years ago, but not its current activities. And TFL
8 is not and has never been a trading platform for digital
9 currencies like FTX, for example. TFL does not have, and
10 never had customers in a way that digital asset companies do,
11 for example, Celsius Networks, and TFL does not make loans of
12 cryptocurrency like Genesis did.

13 TFL product users do not have accounts with TFL
14 and TFL has never held, and does not hold any customer funds;
15 instead, more simple, TFL is a software-development company.
16 It doesn't operate to gain profits in a traditional sense;
17 rather, it expects to reinvest all of the revenue that it
18 earns into the business and back into the Terra blockchain
19 ecosystem for the benefit of the Terra community.

20 THE COURT: But it is a corporate enterprise.

21 I read that in the declaration and I'm -- it's
22 almost like a -- the description is almost a public-interest
23 corporation or a public trust.

24 MS. BERKOVICH: It does seem like a not-for-profit
25 or whatever, but that's the way the business purpose is.

1 It's a community built on it and the purpose is to expand the
2 blockchain.

3 THE COURT: Can I ask in the more general terms,
4 it seems more of an ethic than a restriction on the business.
5 This is how it's being modeled in order to achieve this
6 result and build this community, rather than sell as many
7 widgets or get as many people to sign up for Amazon Prime as
8 you could.

9 Is that a fair characterization?

10 MS. BERKOVICH: No, that's right.

11 And you can see the company benefits from
12 reinvesting --

13 THE COURT: Sure.

14 MS. BERKOVICH: -- those profits back in and
15 building up the Terra blockchain, so it does inure to the
16 benefit of the company. There is a sense of maximizing value
17 by improving the Terra blockchain.

18 THE COURT: Okay.

19 MS. BERKOVICH: You're right, it's an ethic. They
20 don't think about, let's, you know, gain dollars and cents
21 and put it in our pockets. It's to put it back into the
22 ecosystem and back into the blockchain.

23 THE COURT: Okay. I understand.

24 MS. BERKOVICH: Okay. So why is TFL here?

25 So, TFL is a defendant in an action that the SEC

1 commenced and is currently pending in the District Court for
2 the Southern District of New York. In late December, so less
3 than -- or I guess now, just a month ago, the District Court
4 granted summary judgment to the SEC on certain claims,
5 importantly finding that TFL and its founder and former CEO
6 Bill Kwon, offered and sold unregistered securities by
7 issuing TFL's native tokens to investors. So there's already
8 been a finding that TFL engaged in wrongdoing.

13 THE COURT: After the trial?

14 MS. BERKOVICH: After the trial.

15 THE COURT: So I just wanted to make sure I
16 understood procedurally. So summary judgment has been
17 granted by Judge Rakoff.

18 MS. BERKOVICH: Yes, Your Honor.

19 THE COURT: Matters that remain in dispute are
20 headed to trial next month or March, and at that point, there
21 is the prospect of a judgment being, a money judgment being
22 entered with the consequences that are described in the
23 declaration. Do I have that timing right?

24 MS. BERKOVICH: Yes, Your Honor.

25 THE COURT: So there was -- it wasn't a hundred

1 percent clear. I thought that that was it, but again, part
2 of the concern, or part of my uncertainty was whether or not
3 there was an expectation of an immediate issuance of a money
4 judgment by the Southern District in advance of the trial,
5 but the summary judgment just answered the question as to
6 certain issues of liability.

7 MS. BERKOVICH: Liability, yes, Your Honor.

8 THE COURT: Okay. I understand.

9 MS. BERKOVICH: So given the existing ruling,
10 however, it's possible, maybe likely that the liability
11 exposure outstrikes the value of the assets. So this isn't
12 LTL and this isn't the other case in which Ms. Richenderfer
13 mentioned. We have the judgment against us. That will be
14 converted into a money judgment. That will put us into
15 financial distress for now. For now. It's not over yet.

16 So, where is TFL going? So after the judgment is
17 entered, we will appeal the District Court decision to the
18 Second Circuit Court of Appeals. TFL believes it has very
19 strong arguments that the District Court's summary judgment
20 decision should be reversed and I'll discuss that a little
21 bit -- obviously not an issue that we're asking this Court to
22 decide -- but we need to be able to pursue the appeal for the
23 benefit of the company.

24 THE COURT: And again, I think that the
25 declaration was clear on this, but I want to confirm, the

1 debtor is not seeking to use the stay to stop the litigation
2 in the Southern District. It intends to move forward with
3 the trial in March; is that correct?

4 MS. BERKOVICH: Yes, Your Honor.

5 THE COURT: Okay. You may proceed.

6 MS. BERKOVICH: So TFL sought Chapter 11
7 protection to protect its assets from value-destructive
8 creditor enforcement actions which would come, ensure the
9 ability to appeal to the Second Circuit, maximize value for
10 all stakeholders, including creditors, our 60 employees, and
11 the hundreds of thousands of people that have a stake in the
12 success of this blockchain, enable operations in the ordinary
13 course of business, including continuing and expanding our
14 web-free offerings, and if necessary, treat similarly
15 situated creditors similarly through our restructuring plan.
16 In short, TFL is using Chapter 11 to pursue the appeal while
17 continuing its business.

18 Absent the protections of Chapter 11, the SEC
19 could eventually enforce its money judgments before
20 resolution of the appeal, which would be value-destructive to
21 all stakeholders, including, in our view, the very same token
22 holders that the SEC is purporting to protect in its action.
23 We believe our path is more value-maximizing and protective
24 of them.

25 So, today, TFL's focused on the future of the

1 business and the Terra community, including developing and
2 releasing exciting, cutting-edge technology and applications
3 to maximize the value of the blockchain.

4 The key players here on the management team --
5 I'll go a little bit out of order, but Chris Amani, who Your
6 Honor met. We have Cayden Bernstein, who's the vice
7 president of people, and I'm going to -- Peter Shea, who's
8 the general counsel. Those three members of senior
9 management are based in the United States. And then we have
10 Mike Brown, the chief technology officer; Mark Chan, the head
11 of Ecosystem; Edward Lim; and Javier Su. The board of
12 directors consists of Mr. Amani. We have Mr. (Indiscernible)
13 again. For Singapore company, you need to have a resident
14 director in Singapore and --

15 THE COURT: I understand.

16 MS. BERKOVICH: -- he is part of our -- he is an
17 employee, but also a director. And the third director is
18 also a U.S. person, John Dubel, and we put something about
19 his background into the deck.

20 THE COURT: I saw that.

21 MS. BERKOVICH: We did form a special committee
22 prepetition and we'll talk about the investigation, but
23 Mr. Dubel is on the special committee.

24 And you see here, the advisors that TFL assembled
25 to get it through its process and to make sure that there are

1 appropriate controls and adherence to the law and bankruptcy
2 law during the course of this Chapter 11 case.

3 THE COURT: Very good.

4 MS. BERKOVICH: With that, I will go to the
5 company background. At this point, people have different
6 levels of understanding about cryptocurrency and blockchains.
7 I'm happy to go through the 101 or we can skip over it if you
8 would like.

9 THE COURT: Why don't we skip over it for purposes
10 of today.

11 MS. BERKOVICH: Okay. So we get to the company
12 timeline. I think this is helpful.

13 So Terraform was formed in 2018. It launched the
14 Terra Classic blockchain in 2019 and issued one billion Luna
15 Classic. In 2020, it introduced the UST stablecoin, which
16 became operational on the Terra Classic blockchain. It's
17 those two, you know, sales of those tokens that are the
18 issue --

19 THE COURT: The subject of the litigation.

20 MS. BERKOVICH: -- yeah, subject of the
21 litigation.

22 THE COURT: I got it.

23 MS. BERKOVICH: So, you know, 2020, there's the
24 crypto (indiscernible) collapse. Particularly, the UST
25 experienced a significant de-peg and the prices of both of

1 those tokens collapsed. TFL went to the community and had a
2 proposal to launch a new blockchain that was approved and it
3 air dropped new Luna, different from at the Luna Classic, to
4 the holders of Luna Classic and UST.

5 Then, in early 2023, several things happened. The
6 SEC commenced its litigation. Mr. Kwon resigned as both, CEO
7 and director, and Mr. Amani was appointed as CEO and
8 director. So the management changes last spring.

9 THE COURT: And Mr. Kwon, I saw in Footnote 20,
10 Mr. Kwon is currently in Montenegro in custody, correct?

11 MS. BERKOVICH: Yes, correct, in jail.

12 THE COURT: So you may proceed.

13 MS. BERKOVICH: And then something exciting
14 happened in 2023. The company approached the community with
15 a proposal (indiscernible) how to improve the blockchain.
16 The community voted in favor and granted to grant the company
17 150 million Luna out of the community pool.

18 As the summary judgment decision was approaching,
19 TFL hired Weil at the end of December. We got the summary
20 judgment decision and then in January, TFL hired Alvarez &
21 Marsal as financial advisor. Wong Partners is assisting the
22 company with Singapore governance advice. We brought John
23 Dubel on board as an independent director in mid-January and
24 then the Board approved and the company filed the Chapter 11
25 petition on January 21st. And you see here, the trial is

1 expected to commence in two months.

2 So, again, TFL's goal is to foster a self-
3 sustaining digital network with a vibrant and flourishing
4 community of users. TFL does this through developing tools
5 and applications on the blockchain that drive economic
6 opportunity to it. We have a workforce of 60 employees and
7 contractors in more than 15 countries, including many in the
8 United States, and these are mostly software developers.

9 THE COURT: Uh-huh.

10 MS. BERKOVICH: Okay. So we talked a lot about
11 the Terra community. Who is the Terra community?

12 So we've got over half a million stakeholders as
13 measured by wallets, with 37,000 monthly active users,
14 measured by unique wallets. The users own the Luna tokens
15 and they utilize the various applications that the debtor and
16 others have developed and some of them (indiscernible). So,
17 there's a decentralized governance process on the blockchain.
18 Community members can submit proposals, democratically vote
19 on proposals, and implement various proposals, if approved by
20 the requisite vote.

21 So, again, for example, as I mentioned in October
22 of last year, TFL proposed, and the community approved the
23 proposal to provide TFL with 150 million Luna tokens from the
24 community pool to support a project that TFL outlined and we
25 put in the declaration, to grow the blockchain and fund other

1 developers that contribute to its operation. So out of those
2 150, there's 100 million that went to TFL's treasury and 25
3 million were earmarked for strategic partnerships and
4 community project initiatives. Those 125 vest over 5 years
5 and then there's 25 million non-vesting. They're immediately
6 for liquidity funds to be meshed with TFL's treasury and
7 deployed opportunitively. So anyone, actually, can create
8 new applications and protocols for the Terra blockchain, not
9 just TFL and all that makes it more useful. And this funding
10 will help others come to the blockchain.

11 I could spend about 10 minutes talking about the
12 various applications. I'm happy to get into it. It's in
13 detail in the declaration.

14 THE COURT: Yeah, I think the declaration covers a
15 lot of it and I don't think I'm going to get any smarter this
16 afternoon.

17 (Laughter)

18 THE COURT: Let's talk about the organizational
19 structure --

20 MS. BERKOVICH: Sure.

21 THE COURT: -- unless we need to cover some of the
22 software. Again, it's helpful to me in walking through this.
23 This is not a typical brick-and-mortar kind of company.

24 MS. BERKOVICH: Yes. Yes.

25 THE COURT: So I think I would like to understand

1 the organizational structure and then we can talk about where
2 we go from here with the assets and liabilities.

3 MS. BERKOVICH: Sure. So we've got the
4 organizational structure. We have just one debtor here, the
5 Singapore entity. Yes, it's a Singapore entity, but its
6 management is in the U.S. Its primary creditor is the U.S.
7 Its advisors are in the U.S. And I think that's enough
8 (indiscernible) it's clear why we're here.

9 There are four subsidiaries. Two are dissolved.
10 One is in the process of being dissolved. The main operating
11 subsidiary is Proximity Panorama (phonetic). This is an
12 entity that the company acquired in November or December of
13 last year that has exciting software and IT that works really
14 well with the company's application. So there's already been
15 a lot of synergies there and the company thinks that it'll
16 bring value. So that's the corporate structure.

17 THE COURT: And is the Korea entity, Terraform
18 Labs Korea, that's an operating entity, is that correct, or
19 is that dissolved?

20 MS. BERKOVICH: No, that's in the process of being
21 dissolved. It just hasn't been formally. It's like stuck in
22 the court or something.

23 THE COURT: Okay.

24 MS. BERKOVICH: It's not an entity that the
25 company uses.

1 So the company's assets are the various digital
2 assets held in treasury. These through the wallets that TFL
3 controls.

4 You know, after the SEC commenced this litigation,
5 all of the company's banks froze the bank accounts and some
6 of the exchanges froze the digital asset accounts, so those
7 are locked. The company -- it's very unusual, the company
8 has no cash. We don't see a cash management motion; we see a
9 Treasury Management motion.

10 THE COURT: I read the Treasury Management motion
11 a couple times.

12 MS. BERKOVICH: Yes.

13 (Laughter)

14 MS. BERKOVICH: You know, one thing we're hoping
15 is that through the Chapter 11 case, then we'll be able to go
16 to banks and convince them that we are a company that they
17 should be banking with us or we should be banking with them.

18 You know, there's larger law firm retainers than
19 normal, partly because of a cash situation. It helps fund
20 professional fees. There's 57 million in fiat currency and
21 fiat is what, you know, people refer to like "U.S.
22 dollars" --

23 THE COURT: Dollars.

24 MS. BERKOVICH: Yeah, exactly. Not crypto.

25 THE COURT: Is that functionally a prejudgment

1 attachment or something in the Singapore Court?

2 MR. CALIFANO: Your Honor.

3 THE COURT: If you could come on up to the podium.

4 MR. CALIFANO: That amount was deposited in the
5 Court's registry as part of its request to lift a Mareva
6 injunction that had been filed *ex parte*.

7 THE COURT: Okay. And it is under the
8 jurisdiction of that Court pending further proceedings there.

9 MR. CALIFANO: That is correct.

10 THE COURT: Okay. Good to see you again, sir.

11 MS. BERKOVICH: You know, the company is
12 considering what to do with respect to that action in terms
13 of getting recognition in Singapore, or seeking to stay, or
14 move forward, or seeking to have some of that money released
15 because the company believes that the amounts in custody
16 exceeds the exposure for reasons that we put in the
17 declaration.

18 THE COURT: One question I did have is, is there
19 any companion proceeding or insolvency proceeding initiated
20 in Singapore by the debtor or is that intended, or expected,
21 or where does that stand?

22 MS. BERKOVICH: The company is considering whether
23 it needs -- we don't know yet.

24 THE COURT: Okay.

25 MS. BERKOVICH: There's none existing at the

1 moment.

2 THE COURT: Very good.

3 MS. BERKOVICH: The company has invested over the
4 years over \$50 million in 12 limited partnerships and LLC's,
5 effectively, venture investments on various technology
6 fields. More than half of those are Delaware Limited
7 Partnerships or Delaware LLC's. The company has some IP. A
8 lot of its IP is open source, but it does have valuable IP
9 through the Proximity acquisition. Those are the assets.

10 The liabilities we don't have funded debt --

11 THE COURT: So, on the LLC's and the LP's those
12 are simply investments --

13 MS. BERKOVICH: Investments, yes.

14 THE COURT: -- that the company has made in
15 unrelated corporations, right?

16 MS. BERKOVICH: Unrelated corporations, yes.

17 THE COURT: That is part of doing their thing and
18 to the extent that there is value to their investment then
19 the debtor benefits from that and to the extent there's not
20 so be it, but these are, effectively, just investments?

21 MS. BERKOVICH: Correct.

22 THE COURT: Okay. I understand.

23 MS. BERKOVICH: On the liability side no funded
24 debt. We have contingent litigation liability in the SEC
25 enforcement action. That is our biggest potential debt,

1 potential liability in the Singapore action. Under the
2 venture investments there are additional capital
3 contributions that the company is obligated to make.
4 Obviously, the company will decide whether it makes sense to
5 do so in their judgment to come before the Court before
6 paying any amounts. Then there is intercompany claims which
7 the company is in the process of reconciling.

8 THE COURT: Okay.

9 MS. BERKOVICH: So, again, I will be brief here
10 because we covered it in the beginning, but we are here
11 because of the SEC filing. The key issue is whether these
12 tokens are securities. If they are not securities then the
13 SEC doesn't have jurisdiction over them. Again, it's an
14 interesting issue, Your Honor. No one is asking this Court
15 to decide that.

16 The company's view is that these are not
17 securities. These securities laws were adopted in 1930's
18 before computers were even invented and that the SEC,
19 therefore, doesn't have jurisdiction over cryptocurrencies or
20 any other type of currency. Congress had actually considered
21 recently proposals to regulate cryptocurrencies either by the
22 SEC or by the CFTC, but Congress has not enacted those bills.
23 Until recently the SEC did not assert jurisdiction over
24 cryptocurrencies and also refused industry requests to issue
25 regulations clarifying the scope of its authority. But

1 recently the SEC has brought a series of enforcement actions
2 against different companies including TFL and others.

3 Franky, Federal Courts have disagreed about the
4 scope of the SEC's authority over crypto tokens. We cite
5 here a Ripple Labs opinion. So, what happens when there is
6 disagreement over matters of great concern is the company is
7 going to appeal the judgment.

8 I guess we have the SEC's position here, they do
9 believe that these are securities under the Howey case we
10 learned about in law school. I hadn't thought about it since
11 then, but it's interesting and involved orange groves, but
12 not cryptocurrency and we do not believe that the offering
13 sale of tokens constitute investment contracts as required by
14 Howey.

15 You know, we are going to pursue an appeal in the
16 Second Circuit and this is an important matter for the
17 company. If the Second Circuit agrees with TFL, it will be
18 able to continue its business as a going concern. If not, we
19 are going to seek appeal all the way up to the Supreme Court.
20 Because of the size of the potential money judgment the
21 debtor is not likely to satisfy such judgment, nor would it
22 be able to post a supersedeas bond required to appeal. That
23 would enable the SEC to enforce its judgment which would be
24 disastrous for the company and its stakeholders, including
25 the holders of the Luna tokens.

1 As I mentioned earlier, we are not seeking to use
2 the automatic stay to prevent the SEC from continuing to
3 litigate the enforcement action to judgment. We understand
4 that that is subject to an exception to the stay. We are not
5 seeking to expand that, but we are relying on the exception
6 to the exception that would prevent the SEC from enforcing
7 its action.

8 So, the protection of the automatic stay is
9 beneficial for the company, it would allow us to continue to
10 conduct our business, avoid immediate risk of cessation of
11 its operations through enforcement, pursue its right to
12 appeal and protect estate assets.

13 I am nearly done. The company has recently taken
14 steps to improve its governance. I know that some of this,
15 most of this -- and there is a special committee that has
16 already been active in conducting investigations into various
17 items that are laid out here including claims and causes of
18 actions against current and former directors and
19 shareholders.

20 Last slide on the path forward. By utilizing the
21 Chapter 11 process and the tools of the bankruptcy code, TFL
22 hopes to emerge as a reorganized and stronger enterprise for
23 the benefit of all stakeholders.

24 Does Your Honor have any questions?

25 THE COURT: I don't. Before we turn to the

1 motions though I would hear from anyone that wishes to be
2 heard. I appreciate getting context from the Office of the
3 United States Trustee a few moments ago, but I certainly --
4 the SEC came up here, your name was mentioned a few times or
5 your organization, Ms. Scheuer. Good to see you. Welcome
6 back.

7 MS. SCHAUER: Thank you, Your Honor. Good to see
8 you as well. For the record Therese Scheuer for the U.S.
9 Securities and Exchange Commission.

10 Your Honor, with me on the line is William
11 Uptegrove from the Securities and Exchange Commission, Roger
12 Landsman and Chris Carney are handling the District Court
13 litigation are also on the line by Zoom. And additional SEC
14 staffers are also joining this hearing by Zoom.

15 THE COURT: Very good. Welcome all.

16 MS. SCHEUER: Thank you, Your Honor.

17 Your Honor, if I may, I would like to first give a
18 brief status report on the SEC's action against Terraform. I
19 think it might be helpful to provide a little bit of context
20 as this appears to be the reason they filed for bankruptcy.
21 Then, Your Honor, I would like to highlight for the Court
22 some concerns that we have regarding the bankruptcy case.

23 Your Honor, as Ms. Berkovich has noted, the SEC
24 sued the debtor and its former CEO in the Southern District
25 of New York alleging the debtor offered and sold unregistered

1 securities and engaged in a fraudulent scheme that led to the
2 loss of \$40 billion in market value. On December 28th, 2023
3 the District Court ruled in favor of the SEC finding that the
4 debtor offered and sold certain crypto assets including UST
5 and Luna Classic as unregistered securities. A jury trial on
6 the fraud charges is scheduled to start March 25th.

7 Rober Landsman and Chris Carney are attorneys in
8 the Division of Enforcement handling the District Court
9 litigation. They have not filed a government certification,
10 Your Honor, under the local rules, but are on the line with
11 me and can provide further detail regarding the District
12 Court action if Your Honor will permit.

13 THE COURT: I would certainly permit and, again, I
14 think counsel has heard me give this speech before. This is
15 a first day hearing, I certainly am not going to stand on
16 ceremony as to either affiliation with local counsel or the
17 filing of the certifications. If there are parties that wish
18 to be heard either remotely or in the courtroom, as always, I
19 will hear from anyone that wishes to be heard.

20 Again, I have been given a lot of context from the
21 declaration, from Ms. Berkovich's comprehensive presentation
22 and colloquy with the United States Trustee. And to be -- I
23 want each side to be clear, I welcome the context. This is
24 both a complex business and product, for lack of a better
25 term, but in some ways the structure of what is in front of

1 me is actually not terribly complicated. I would welcome any
2 party that wishes to address the Court.

3 Understand, and I think everyone does, that I am
4 focused exclusively today on the relief that is being sought.
5 So, parties rights are fully reserved and to the extent that
6 I am being advised by counsel, at the podium or otherwise, it
7 is for purposes of context. It doesn't hurt, but there is
8 often a sense of discomfort when the other side is explaining
9 everything about where it is that we -- how it is that we got
10 here and where it is we are going to go. I understand that
11 dynamic pretty comfortably.

12 But, no, to the extent that you or your colleagues
13 wish to touch on some of these issues, understand, of course,
14 I am not trying this litigation and the debtor has
15 represented that it intends to move forward and there has
16 been substantial description and discussion of that
17 litigation. So, to the extent that I would benefit from
18 being educated a bit on it, I am all ears.

19 MS. SCHEUER: Thank you, Your Honor. I think we
20 do have a bit more to do, but maybe helpful to the Court in
21 addressing some of the relief that the debtors seek today.
22 We do have some concerns about the relief being sought today,
23 specifically the treasury management motion.

24 THE COURT: Okay.

25 MS. SCHEUER: Thank you, Your Honor. I will turn

1 it over to my colleagues.

2 THE COURT: Very good.

3 MR. LANDSMAN: Thank you, Your Honor. I will try
4 and be brief and not go over too much of what was already
5 discussed, but try and highlight some things that we think
6 are of particular importance as well as provide some
7 additional concerns that we have about aspects of the SEC
8 case that may impact the (indiscernible) case.

9 It was previously discussed on December 28th, 2023
10 Judge Rakoff from the Southern District of New York agreed
11 with the SEC and held that as a matter of law Terraform
12 engaged in unregistered offers and sales of, what the debtors
13 have described as, Luna Classic or their original Luna
14 tokens, as well as another token, MIR, which are securities.

15 In that action, what is pending for trial at the
16 end of the March the SEC also alleged that defendants
17 violated the anti-fraud provisions of the Securities and
18 Exchange Act. The SEC alleged two different frauds.

19 The first fraud is that defendants allegedly
20 fraudulently told people that their blockchain was used to
21 settle real world transactions, it was not. The second fraud
22 is that defendants allegedly told people that another one of
23 their tokens, called UST, was supposed to equal one dollar
24 and was pegged to the US dollar by an automated algorithm
25 when it was not. Judge Rakoff has described the SEC's

1 evidence as compelling and damning.

2 Without going into and repeating too much about
3 the case, I think I also wanted to mention that the SEC has
4 concerns about Terraforms business and particularly the use
5 of Luna 2.0. As noted, Judge Rakoff found Terraform liable
6 for violating the Securities Act for unregistered offers and
7 sales of their original Luna token or the Luna Classic. When
8 Luna Classic collapsed in 2022 Terraform and Do Kwon created
9 new Luna tokens, known as Luna 2.0 which it currently holds a
10 significant sum according to the debtor's filings.

11 Just like Luna Classic, Luna 2.0 appears to derive
12 value from the use of the blockchain. Moreover, in
13 accordance with the debtor's filings, the success of Luna 2.0
14 will be tied to the debtor's success.

15 While the debtors say in its papers that it is not
16 currently issuing or selling crypto assets for value, the
17 business they seek to reorganize as may not be in compliance
18 with the securities laws as it appears to us that they are
19 seeking to replicate the business for which the District
20 Court found violative of the Federal Securities laws by
21 trying to fund its operations for years with Luna.

22 If you have any questions, I am happy to answer
23 them or, otherwise, I will turn it back over to Ms. Scheuer.

24 THE COURT: No, I don't have any questions. Thank
25 you for your comments.

1 Ms. Scheuer.

2 MS. SCHEUER: Thank you, Your Honor.

3 Your Honor, the debtor has said that it filed for
4 bankruptcy because of the SEC action, but I would just like
5 to provide a little bit more background on the filing. Prior
6 to the bankruptcy case the SEC repeatedly asked Terraform for
7 information regarding \$70 million which was transferred to
8 Dentons in the past month. The staff was told that Terraform
9 would provide this information by January 22nd, but rather
10 then provide the information about the \$70 million in
11 prepetition transfers Terraform filed for bankruptcy on
12 January 21st.

13 Your Honor, among your concerns with the
14 bankruptcy case is whether the petition was properly filed.
15 Obviously, we are still very early on, but based on the
16 declarations, as has been discussed by the Office of the
17 United States Trustee, the debtor appeared to perceive
18 possible financial problems down the road in the future;
19 however, it doesn't appear to be in current financial
20 distress.

21 To the extent the debtor has solvency issues now
22 it may be because of the assets it transferred prepetition.
23 The SEC's claim is unliquidated because we obtained a
24 judgment as to liability only, not as to amount, but
25 according to the debtor's own filings we appear to be their

1 most significant creditor. The top creditor with a
2 liquidated claim is listed at approximately \$3,000.

3 Because there are so few creditors here and those
4 with liquidated claims are small there may not be sufficient
5 interest in a committee to investigate the \$70 million in
6 prepetition transfers or pursue other avoidance actions. And
7 for the reasons discussed by my colleague, Mr. Landsman, it
8 appears to us that the debtor may be unable to reorganize its
9 business.

10 In addition, Your Honor, as also discussed by the
11 Office of the United States Trustee, venue may not be proper
12 in this District. It's worth noting, Your Honor, that the
13 debtor contested personal jurisdiction in the District Court
14 action and my understanding is it took that issue all the way
15 up to the Supreme Court. The debtor's principal place of
16 business and placement corporation is in Singapore. They
17 don't appear to have -- they don't have an affiliate that
18 filed for bankruptcy here. So, venue in Delaware may not be
19 proper. This is one of the issues that we are looking into,
20 Your Honor.

21 I have some comments with respect to the treasury
22 management motion, Your Honor.

23 THE COURT: We will deal with that when we get to
24 the motions. Any other comments, Ms. Scheuer?

25 MS. SCHEUER: Not at this time. Thank you, Your

1 Honor.

2 THE COURT: Thank you.

3 Does anyone else wish to be heard before we turn
4 to the motions?

5 (No verbal response)

6 THE COURT: Very good. Again, I think there has
7 been a lot of colloquy with the Court that is helpful to
8 provide context and I take it in that light. I think we can
9 then turn to the applications themselves.

10 Ms. Berkovich, I think you had given me a dance
11 card, but I don't have it written down. So, I am happy to
12 hear from anyone that wishes to present the motions.

13 MS. BERKOVICH: We will have Mr. Andrews present
14 the first two motions.

15 THE COURT: Very good.

16 MR. ANDREWS: Good afternoon, Your Honor. Gavin
17 Andrews of Weil Gotshal & Manges on behalf of the debtor.

18 THE COURT: Welcome.

19 MR. ANDREWS: Your Honor, I will keep this brief,
20 but Item No. 4 on the agenda is the application to retain
21 Epiq as the claims and noticing agent. That is at Docket No.
22 17. Your Honor, we did receive some minor administrative
23 comments from the U.S.T., which I believe that order has been
24 uploaded prior to the hearing.

25 THE COURT: I did receive a revised form of order

1 and I did not have issues with that order.

2 MR. ANDREWS: Thank you, Your Honor. Barring any
3 other questions, we would like that to be entered.

4 THE COURT: I would ask if anyone wishes to be
5 heard with respect to the application to retain Epiq as
6 claims and noticing agent.

7 (No verbal response)

8 THE COURT: Very well. I am going to grant the
9 motion. As Mr. Andrews noted, this application was filed for
10 purposes of having Epiq provide the back-office claims and
11 noticing services for the debtor. The Court is certainly
12 familiar with Epiq and I am satisfied that they possess the
13 requisite resources and experience to perform the services
14 that are necessary and required here.

15 In addition, I believe that this case also
16 implicates our local rules which require in large cases that
17 a debtor move promptly to engage the services of a claims and
18 noticing agent. That has occurred here. I have had an
19 opportunity to review the application as well as the
20 accompanying documents. I am satisfied it's compliant with
21 our local rules and consistent with relief that I have
22 granted in prior cases. The motion is granted. The order
23 will issue.

24 MR. ANDREWS: Thank you, Your Honor.

25 Moving to Item No. 5, that is the debtor's motion

1 requesting authorization to file portions of the creditor
2 matrix and future filings with personal information under
3 seal. That is at Docket No. 11, Your Honor. The personal
4 information is home addresses of the employees. We believe
5 disclosure would pose to those individuals risk, potentially
6 due to threats of violence. Some of the debtor's personnel
7 (indiscernible) in the past. And also, in relation to both
8 trading identify theft.

9 Again, the United States Trustee had some minor
10 comments to the order and I believe that has been uploaded to
11 your Chambers. And, again, if there are no other questions,
12 Your Honor, we would ask that that order be entered.

13 THE COURT: Very good. I would ask if anyone
14 wishes to be heard with respect to the debtor's motion
15 relating to its creditor matrix.

16 (No verbal response)

17 THE COURT: Okay. I have no issue with this
18 motion. Mr. Andrews, I have a question and if you need to
19 confer with your client or colleagues, you are welcome to do
20 so. The motion, as currently posited, is relief that is
21 standard in this jurisdiction and I think in many, and it
22 goes to the issues that you just raised primarily about
23 concerns about identity theft and personal information being
24 loaded.

25 Historically, this wasn't a big concern because

1 they were giant stacks of paper and nobody would bother to go
2 to the clerk's office and dig that stuff out. Right now,
3 given availability of this electronically and even the
4 services, frankly, provided by the claims and noticing agent
5 it becomes exceedingly easy to do that. I and my colleagues
6 have, I think, consistently approved this relief.

7 I have had a couple different crypto cases and it
8 may be that this company is simply different, but in prior
9 cases there has been significant attention paid to customers,
10 but I don't think you have customers. So, again, the last
11 case that I had, which was Bittrex, I believe, had a
12 significant issue because they had millions of customers that
13 participated on the exchange. This debtor doesn't have that
14 type of a business and doesn't hold that kind of information.
15 So, those folks would not appear.

16 We wouldn't have a community like that on your
17 creditor matrix, do I have that right?

18 MR. ANDREWS: I believe that is correct, Your
19 Honor. Yes.

20 THE COURT: Very good. Then the motion is
21 certainly narrow in scope and I would ask if anyone wishes to
22 be heard.

23 (No verbal response)

24 THE COURT: Hearing no response, I am going to
25 grant the motion. For the reasons that I stated a moment ago

1 in my colloquy with Mr. Andrews I find that the relief
2 requested is appropriate and warranted and consistent with
3 that which I and my colleagues have granted on many prior
4 occasions. The motion is granted and the order will issue.

5 MR. ANDREWS: Thank you very much, Your Honor. I
6 will turn it over to my colleague, Ms. Jessica Liou.

7 THE COURT: Very good. Ms. Liou, welcome.

8 MS. LIOU: Good afternoon, Your Honor. For the
9 record Jessica Liou of Weil Gotshal & Manges, proposed
10 counsel for the debtor.

11 Your Honor, the next item on the agenda is Item
12 No. 6, it's the debtor's employee wages motion filed at
13 Docket No. 20. As my colleague noted, we have been in
14 conversations with the United States Trustee and are fully
15 resolved on comments received to that proposed order. It has
16 been submitted to your Chambers.

17 Very briefly, the scope of requested relief for
18 this motion is authority to pay all outstanding prepetition
19 accrued workforce obligations associated with the 60
20 employees and contractors that are working for the debtor
21 currently or its operating subsidiary, Proximity. These
22 amounts include obligations relating to employee portion of
23 payroll taxes, employee benefits, and also outstanding
24 prepetition accrued amounts relating to leave benefits, the
25 medical plan, and we also seek authority, just out of an

1 abundance of caution, to continue to honor and pay amounts in
2 the ordinary course going forward and also continue business
3 practices, programs, and policies relating to the work force
4 going forward as well.

5 The aggregate amount of the relief sought to be
6 paid relating to the prepetition period is approximately
7 \$846,650, a relatively minimal amount. I can also confirm
8 that the debtor is not seeking to pay any single individual
9 over the statutory priority cap of \$15,150.

10 THE COURT: And the same proposition applies to
11 the contractors that you have identified at Paragraph 25?

12 MS. LIOU: Correct. That is correct, Your Honor.
13 And as noted in the motion, there are many reasons to make
14 these payments. As you have heard and seen this company
15 exists primarily online, but for all of the physical
16 employees around the world who do their jobs, show up every
17 day, and provide a high level of specialized knowledge and
18 skills in order to help the debtor do what it does, which is
19 turn out interesting, exciting software products in order to
20 aid in the adoption of the Terra blockchain and aid in
21 increasing user traffic to the blockchain.

22 So, for those reasons and to avoid immediate and
23 irreparable harm to the business we ask the Court grant the
24 wages motion on an interim basis.

25 THE COURT: Very good. I would ask if anyone

1 wishes to be heard with respect to the wages and benefits
2 motion.

3 Ms. Scheuer.

4 MS. SCHEUER: Good afternoon, Your Honor. Therese
5 Scheuer for the U.S. Securities and Exchange Commission for
6 the record.

7 Just very briefly, Your Honor, my understanding is
8 that an SEC carve-out has been added to the order. Thank
9 you. Given the timing here, the SEC hasn't had the
10 opportunity to fully review the motion and just reserves the
11 right to object to final entry of the order.

12 THE COURT: And I would note that that right is
13 reserved without even making it specifically on the record,
14 but so noted. As for purposes of today you are satisfied
15 with the language in the order.

16 MS. SCHEUER: Yes, as long as the carve-out is
17 being included. Thank you.

18 THE COURT: Very good. Does anyone else wish to
19 be heard with respect to wages and benefits?

20 (No verbal response)

21 THE COURT: Okay. I am going to grant the motion
22 and consistent with Ms. Liou's observations I would make a
23 comment I have made many, many times which is that at the
24 outset of a case there is no constituency for whom I have
25 greater concern then the employees that look to the company

1 for payment of wages and benefits.

2 I have had an opportunity to review the
3 application, it is comprehensive and thorough. It identifies
4 a compensation and benefit regime that I would generally
5 expect in a company of this size and that I would also
6 observe that, again, consistent with Ms. Liou's comments the
7 nature of this company's business is in the heads of the
8 people that do the work for the company. That is not a novel
9 proposition in this day in age, but to me a company that
10 comes into a Chapter 11 seeking to reorganize or achieve some
11 particular goal step one is insuring that your employees are
12 paid. So, this relief accomplishes that.

13 As Ms. Liou noted, the relief does implicate
14 Bankruptcy Rule 6003 in that it contemplates a payment of
15 certain prepetition obligations in the first few weeks of the
16 case. For the reasons stated in the declaration as well as
17 the Court's long experience I am satisfied that the debtor's
18 reorganization would suffer the risk of immediate and
19 irreparable harm in the absence of the relief requested. The
20 motion is granted. The order will issue.

21 MS. LIOU: Thank you, Your Honor.

22 The next item on the agenda is Item No. 7, that is
23 the debtor's treasury management motion which was filed at
24 Docket No. 21. And I am happy to walk through this motion in
25 as much or as little detail as needed, but --

1 THE COURT: My colleagues asked if I would ask you
2 if you brought the wallets with you.

3 (Laughter)

4 MS. LIOU: So, generally speaking, I would
5 classify the relief in this motion in three broad categories
6 just to make it easy to digest. I do think that in many
7 respects, as odd as the motion seems because of the nature of
8 this business, its actually fairly vanilla in the sense that
9 we are simply seeking to continue to use the management --
10 the treasury management system that we are using prepetition.

11 Now had the debtor had the ability to access bank
12 accounts then a component of this motion would have included
13 cash management as well, but given that the debtor had its
14 access cut off prepetition it had to find other ways to
15 support itself and as you saw from the first day declaration
16 the large majority of its assets are digital assets and those
17 digital assets are stored in existing wallets and accounts
18 that exist online on the blockchain.

19 So as the first component of the relief its simply
20 continuing our ability to store, transfer, stake, convert,
21 and disburse those digital assets as we, otherwise, would in
22 the ordinary course. And to continue using those existing
23 wallets and accounts. And as you can imagine, there will
24 come a time where occasion demands that we will need to open
25 new wallets and accounts and we would like to ensure that we

1 have authority to do that as well.

2 THE COURT: Ms. Liou, I just want to ask, I think
3 that the motion speaks directly to this, but anticipating,
4 I'm sure, a discussion you probably had with Ms.
5 Richenderfer, notwithstanding the difference in currency
6 which then leads to the difference in the mechanics by which
7 it's held and where it's held your point is this is a cash
8 management system.

9 MS. LIOU: Pretty much, Your Honor.

10 THE COURT: So, one of the main considerations in
11 a cash management system in a more typical case is ensuring
12 that there are records that are -- that show where money goes
13 and that that can be tracked and traced, etc. I think that
14 the papers and the declarations speak to exactly that, but if
15 you would confirm that the debtor does have the ability to
16 track transfers and explain to the Court, to the world, etc.,
17 if asked, how money was used post-petition under this regime
18 that would be helpful.

19 MS. LIOU: Yes, Your Honor. I would say that there
20 is actually two components to that tracking. There is an
21 internal component, which is the debtor's books and records,
22 and the debtor keeps books and records unlike some of the
23 crypto companies that have filed.

24 THE COURT: I am sad to say it is helpful for you
25 to make that point.

1 MS. LIOU: They do have internal individuals
2 responsible for maintaining those books and records. This is
3 an area of concern that was identified by the U.S. Trustee's
4 Office and we have negotiated acceptable language for
5 inclusion in the proposed treasury management order that
6 addresses this very issue that we would provide those records
7 upon request to the United States Trustees Office.

8 So, I can assure you that there should be no
9 concern on that front, but in addition to that I will point
10 out that this is a company that transacts in the digital
11 world. So, every transaction is publicly available on the
12 blockchain and it will be there forever.

13 THE COURT: Okay. I interrupted you, you may
14 proceed.

15 MS. LIOU: Sure. I was also going to mention that
16 with respect to the Treasury management component of this,
17 there is a cash management component in the sense that we are
18 endeavoring to try to open new bank accounts now that we are
19 in Chapter 11, and to the extent that we are able to find a
20 willing financial institution to partner with, then we are
21 requesting authority to continue to use those bank accounts
22 and open new bank accounts. And to the extent that we are
23 able to gain access to the frozen bank accounts that existed
24 prepetition, then we would obviously want to be able to make
25 transfers out of those accounts.

1 THE COURT: And, if I'm correct, I think that the
2 revised language that has been proposed in the most recent
3 order addresses the mechanics of that. Do I have that right?

4 MS. LIOU: Yes. Actually, Your Honor, do you
5 have -- I just want to make sure you do have the redline with
6 proposed language --

7 THE COURT: You know --

8 MS. LIOU: -- from the U.S. Trustee's Office.

9 THE COURT: -- I may have left it on my desk. Do
10 we have a copy?

11 MS. LIOU: Yes, I do have a copy of the redline.

12 THE COURT: That would be great.

13 MS. LIOU: Would you like me to approach?

14 THE COURT: Sure.

15 (Pause)

16 THE COURT: Thanks. So this is what we received
17 by chambers I think a couple hours before the hearing. I
18 think I left my copy on my desk.

19 MS. LIOU: So I will note a couple of things.
20 That redline is a little incomplete, that is the redline that
21 the United States Trustee's Office provided to us maybe less
22 than an hour before the hearing. And so, luckily, we were
23 able to consensually resolve language. And there are going
24 to be some edits to that language --

25 THE COURT: Okay.

1 MS. LIOU: -- which we will submit in a revised
2 order to the Court through certification of counsel after the
3 hearing.

4 THE COURT: But that's all fine and, again, I
5 appreciate the engagement between you folks and the United
6 States Trustee on this, I think the point that I was raising
7 was language that's been added to paragraph 4 that I had seen
8 that talked about providing the U.S. Trustee with notice if
9 we do -- if you're able to get accounts or open accounts.
10 And that's what I would typically expect, I just wanted to
11 make sure --

12 MS. LIOU: Correct.

13 THE COURT: -- that it was in there.

14 MS. LIOU: Yes, yes. There will be no changes to
15 that language.

16 THE COURT: Okay.

17 MS. LIOU: The second component of the relief
18 sought in the Treasury management motion is the ability to
19 continue processing intercompany transactions. This is
20 primarily relating to supporting the operating expenses of
21 Proximity. The wages motion covered the supporting of the
22 employee obligations arising from Proximity, but there will
23 be additional operating expenses -- fairly de minimis
24 expenses, about 20 to \$30,000 a month, and so we are seeking
25 authority to continue to support that integral part of the

1 debtor's business.

2 THE COURT: Okay.

3 MS. LIOU: In addition, I will say that there are
4 some other components of relief that are intended to
5 facilitate the debtor's continued access to funds or access
6 to additional funds, and these components include the ability
7 to continue to use Moon Rabbit as effectively a digital asset
8 converter, so that we can convert digital assets to --

9 THE COURT: To fiat currency --

10 MS. LIOU: -- fiat --

11 THE COURT: -- as necessary.

12 MS. LIOU: Exactly, exactly. There's also the
13 additional component of the language we built in addressing
14 the Dentons fee advance, and to the extent that the debtors
15 and Dentons are able to facilitate the transfer of excess
16 funds from the fee advance back to the debtor, then the
17 debtor would like the authority to be able to make those
18 transfers and utilize those funds going forward for operating
19 expenses.

20 Lastly, I would say that there is language that
21 also addresses the deposit placed with the Singapore high
22 court and reserving our ability to of course file an
23 application before the Singapore high court to see release of
24 all or a portion of the funds as may be necessary, so that we
25 can bring that asset back into the estate as well.

1 THE COURT: Okay.

2 MS. LIOU: Okay. And I would say that there's
3 some additional relief relating to paying any obligations
4 that arise in connection with all of the things that I laid
5 out to Your Honor, and then also seeking an extension of time
6 to comply with Section 345(b) for obvious reasons here.

7 THE COURT: Okay.

8 MS. LIOU: If Your Honor has no questions, I think
9 at this time we would say, for the reasons set forth in the
10 motion and based upon the evidence provided in the Leto
11 declaration, we would request entry of the Treasury
12 management order on an interim basis.

13 I will note because I forgot the first time with
14 the wages motion that we did agree to consensual language
15 with the SEC as well for this order, which we have included
16 in the proposed order that we will submit to Your Honor.

17 THE COURT: Is that language in the draft that I
18 have or is that still in flux?

19 MS. LIOU: It should be in the draft that you
20 have, Your Honor, but I think one of the paragraphs is in
21 there, maybe not the other. So we just have to make sure we
22 have both paragraphs negotiated with the SEC in the order for
23 you.

24 THE COURT: Okay. I have no questions at this
25 time.

1 I'd like to hear first from the United States
2 Trustee, and then I'll hear from Ms. Scheuer.

3 Ms. Richenderfer?

4 MS. RICHENDERFER: Good afternoon again, Your
5 Honor. I have to say, this is the first time -- and in my
6 discussions with debtor's counsel they admitted that they
7 were not aware of any other cases where every -- all of the
8 accounts were cryptocurrency accounts. I mean, in FTX
9 there's a live mixture of accounts. And unfortunately,
10 because Ms. Sarkessian --

11 THE COURT: But it seems --

12 MS. RICHENDERFER: -- decided to retire, I'm in
13 FTX, so I know about that one now. So --

14 THE COURT: That has not my problem written all
15 over it.

16 MS. RICHENDERFER: Yes.

17 (Laughter)

18 MS. RICHENDERFER: Yeah, unfortunately.

19 THE COURT: I don't disagree. I think, though, as
20 I read the context provided by the declaration and Ms. Liou's
21 presentation, in the absence of the difficulties with the
22 traditional banking entities, this company would have arrived
23 presumably with all of these various wallets, but also with
24 bank accounts and checking, et cetera, that it would have
25 used to facilitate some of its operations. So it's more a

1 function of circumstance than design necessarily that we're
2 looking at this kind of unusual situation that I likewise
3 have not seen. Again, in -- in the other crypto case that I
4 had, at the first day I was asked to approve a DIP facility
5 in bitcoin and, apparently, it was an unremarkable thing.

6 MS. RICHENDERFER: Uh-huh.

7 THE COURT: But -- so I -- and I understand, I
8 guess -- I mentioned at the outset I had read this motion a
9 couple of times to understand precisely what was going on,
10 but, again, I think it was helpful to break it down into the
11 handful of categories that Mr. Liou provided.

12 MS. RICHENDERFER: Yes, Your Honor. And we had an
13 extremely helpful call this morning and I know that most of
14 the participants here from the debtors, representing the
15 debtors were, unfortunately, in the train station getting
16 ready, and Ms. Leamy was in her car. I decided to go into
17 work late, but we had a call around 8 o'clock that really
18 helped --

19 THE COURT: Okay.

20 MS. RICHENDERFER: -- walk us through this because
21 one of our primary concerns, Your Honor, is transparency.
22 With the bank accounts, we get the bank statements, we can --
23 we understand and we know them. And that's one of the
24 reasons why we added language in here about the
25 recordkeeping, and also making information available to us so

1 that we can see the transfers and the transactions.

2 THE COURT: And on that, at least from my point of
3 view, you're pushing an open door. That was my first
4 question to Ms. Liou and she certainly answered it
5 satisfactorily.

6 MS. RICHENDERFER: Yes, Your Honor, and that was
7 as a result of our discussions this morning and then we came
8 up with the language that we could then put into here.

9 There's still a couple of open items of
10 information that we need to receive from the debtors and it's
11 still part of, you know, open doors you say, Your Honor,
12 because we're trying to get a handle around who was in the
13 corporate structure, controls which of the wallets, and what
14 assets as described in the first day declaration are in which
15 of these wallets. I mean, there is an exhibit that's
16 attached hereto that lays them out, and there's -- you know,
17 they're called different things, they're very different.
18 There's also the legacy wallets, which I learned this morning
19 can never be closed because they exist forever. I don't know
20 what's in those wallets, though, and if they're not using
21 them, then they should be -- we respectfully suggest, should
22 be transferred out, much like we would ask for a no-longer-
23 used bank account to be closed out.

24 THE COURT: My guess is that that's a discussion
25 you should continue to have because --

1 MS. RICHENDERFER: Yes.

2 THE COURT: -- I think your and my intuition is
3 going to suggest to the debtor that they should proceed with
4 something that's probably an impossibility, but I think this
5 is not a today issue.

6 MS. RICHENDERFER: Right.

7 THE COURT: Okay --

8 MS. RICHENDERFER: Right.

9 THE COURT: -- I get it.

10 MS. RICHENDERFER: It's not a today issue, Your
11 Honor, I just wanted to say -- mention that there are things
12 that are still in flux that we're trying to get more of a
13 comfort level with, if you will, Your Honor. And one of the
14 reasons is it's been represented to us that Mr. Kwon and
15 Mr. Shin (phonetic), the shareholders who still own this
16 debtor, that they no longer have access to any of these
17 wallets, but -- and I do appreciate that, but that's one of
18 the reasons why we want to know who does have access. And I
19 know there's multi-level approvals that need to be given in
20 order to do the transfers and we want -- we would like that
21 information, again, to make sure that there is no way that
22 the 92 percent shareholder or anyone he may have given his
23 information to can access, and I know the debtor doesn't want
24 that happening either.

25 And the other thing is, Your Honor, and we're

1 still exploring this a bit is that Moon River -- Moon Rabbit,
2 excuse me, is not what I would call a true third party. It
3 is owned by one of the officers of the debtor and it's been
4 represented to us what the flat fee is that they receive
5 every month. And we'll gain some comfort with that, again,
6 Your Honor, when we see the transfers as they occur back and
7 forth to -- you know, to Moon Rabbit.

8 The Dentons fee advance, again, that is something
9 we've requested information about. I understand it's covered
10 by a letter agreement, which we've requested. So we can see
11 because one of our first questions was, well, how do we know
12 that Dentons is really going to go pay that bill if you ask
13 them to go pay that bill?

14 And so, you know, the retainers can be a tricky
15 thing. Law firms could take different positions vis-a-vis a
16 retainer that they've received and whether or not it's still
17 debtor's money or their money.

18 And I think that one of the last ones that -- and
19 I do -- I do apologize to debtors, this just recently came to
20 our attention as we were getting ready to come over here. If
21 you look on Exhibit D with the wallets that are listed,
22 number 21 says Hex trust account, and debtors had advised us
23 that this was frozen. And we're not exactly sure what's in
24 there, I think they told us it was bitcoin, but we have read
25 about there being an entity out there called Hex, and the

1 founder of the company, who seems to go by two names, is in a
2 lot of trouble with different authorities and everything got
3 froze.

4 THE COURT: There's a lot of that going around.

5 MS. RICHENDERFER: There is a lot of that going
6 around in this industry. So I don't know whether it's frozen
7 because of the SEC action against Terraform or if it's frozen
8 because of what's going on with Hex, and I just want to make
9 sure that there are safeguarding of debtor's assets.

10 And, again, we just had a new trial attorney join
11 our office who is sitting at counsel table with us --

12 THE COURT: Ms. Bu, it's good to see you again.
13 Welcome --

14 MS. RICHENDERFER: Yes, someone that you may --

15 THE COURT: -- welcome back.

16 MS. RICHENDERFER: -- I know that she is known to
17 this Court and Ms. Bu has been joined with us, and she loves
18 to go explore things on the internet for us. And so she is
19 the one that found the information for us about Hex just as
20 we were getting ready to come over.

21 THE COURT: Well, I'll hear -- a couple things.

22 MS. RICHENDERFER: Yes.

23 THE COURT: As to the information requests, in
24 dealing with this, I will -- I will at least observe it now.
25 The debtor has commenced a Chapter 11 case, the debtor needs

1 to deal with the United States Trustee, other stakeholders, a
2 committee, if appointed, the Court, and it's my expectation
3 that there will be a productive exchange of information.
4 Part of that exchange today's hearing has demonstrated is
5 an -- there's an educational component to each of those.

6 Again, Ms. Berkovich, you've done a thousand
7 cases. If we were talking about bank accounts at JPMorgan or
8 at TD Bank or something else, we wouldn't be necessarily
9 noodling over this. The concern about where the money is,
10 whether it's money, and to whom it belongs and who has access
11 to it are all completely legitimate questions, most of which
12 I would hope and expect are solvable by productive
13 engagement, and experience teaches that the parties will go
14 through that. I'm not telling you anything that you don't
15 know.

16 If there's a breakdown in communications or
17 there's information that is needed or the wheels start to
18 come off, I would expect -- I'm not a big fan of letters and
19 motion practice on mechanical things, get me on the phone.
20 We have a hearing scheduled for about a month out, but,
21 again, the Trustee has identified concerns just about
22 functionally getting your arms around exactly what it is that
23 you are overseeing in your statutory capacity. That makes
24 perfect sense to me. And, again, the record indicates from
25 counsel that there's been an open dialogue that remains

1 ongoing, and I'm supportive of that and I will foster that.
2 If there are problems, you can expect that I would make
3 myself available.

4 MS. RICHENDERFER: Thank you, Your Honor. And I
5 just wanted to again thank the debtors because they have been
6 trying very hard to educate those of us who are new to all of
7 this.

8 THE COURT: I would note -- any other comments?

9 MS. RICHENDERFER: No, Your Honor. Go ahead.

10 THE COURT: Okay. I would note for the benefit of
11 Ms. Liou and Ms. Berkovich that I think Mr. Amani, who you
12 didn't see, but I did, may have information responsive on the
13 Hex issue. Whether that's a today issue or not, you're
14 welcome to confer, but I'll leave that to you folks.

15 Ms. Liou, did you wish to be heard?

16 MS. LIOU: Yes, I did, Your Honor. First, thank
17 you for the offer to help the parties bridge any differences,
18 if there are differences that end up existing between us.

19 I did want to respond to just three points for
20 purposes of clarity. The first is we are trying to be as
21 transparent as possible, which hopefully you could tell from
22 the papers that we filed, but we are also, as you're probably
23 experienced with this, balancing safety and security
24 concerns, especially given the online and digital nature of
25 the business and the transactions that are being conducted.

1 And so I just want to reiterate that we will need
2 assurances from the United States Trustee's Office that, if
3 we do provide highly sensitive information that may impact
4 the security of the company, including its accounts, that
5 that information will be kept highly confidential.

6 The second point that I wanted to make is that
7 with respect to the Dentons fee advance, I didn't want there
8 to be any ambiguity. The scope of the relief requested in
9 the Treasury management motion was that excess funds would be
10 returned to the debtor, so that the debtor can pay its
11 expenses. And so I just want to be very clear about that,
12 not that there was an expectation that Dentons would be
13 paying operating expense bills directly.

14 The third point I wanted to just raise is that
15 with respect to the Hex trust account, currently, I
16 believe -- I am getting a note on this, so I will pause.

17 (Pause)

18 MS. LIOU: I can confirm that our access to this
19 account is frozen and we welcome any help or aid that the
20 United States Trustee's Office would like to provide us in
21 helping us gain access to not only this account, but other
22 frozen accounts that we have.

23 THE COURT: Okay. Ms. Scheuer?

24 MS. SCHEUER: Thank you, Your Honor. Again, for
25 the record, Therese Scheuer for the SEC.

1 Your Honor, we appreciate the debtor incorporating
2 the carveout language. Given the timing here, I did alert
3 debtor's counsel that we may have -- we would likely have
4 some additional comments. And for the reasons discussed by
5 Mr. Landsman, Your Honor, you know, it appears that some of
6 the relief set forth in the Treasury management motion may
7 not be in compliance with the securities laws.

8 I think, you know, the SEC requested any relief
9 provided to the debtor on an interim basis be as limited as
10 possible. Specifically, we'd ask that the Court not
11 authorize any transactions involving LUNA 2.0.

12 THE COURT: I think I'd like to know if the debtor
13 is intending -- let's do this, actually, I think we should
14 take a five-minute break. A couple things.

15 The parties have engaged productively the SEC and
16 the United States Trustee on this motion. There is language
17 here, I've had an opportunity to review it; I have no issues
18 with it. But, again, this is a first day hearing and if the
19 SEC or the Government has additional comments or
20 observations, it would be better to have that discussion
21 without me in the middle of it. So I would be happy to give
22 you a few moments to have that discussion.

23 A couple other things that, again, I think are --
24 should be apparent, but bear repeating. The sensitivity
25 concerns Ms. Liou just touched on about the nature of the

1 debtor's business and the, frankly, highly confidential and
2 sensitive information that may be relevant to the responses
3 from the -- for information from the United States Trustee,
4 to me, that seems apparent, but this is not uncharted ground.
5 The United States Trustee commonly gets sensitive
6 information. And part of the reason that I suggested, if
7 there are issues with respect to the exchange of information
8 that the dialogue starts to falter, I don't want letters from
9 the parties, I want you to get me on the phone. And, to be
10 honest, if circumstances warrant, a chambers conference that
11 some of these discussions are not on the record may be
12 appropriate because there are consequences.

13 The United States Trustee is trying to do a job,
14 but in many ways the job and the framework of that job
15 doesn't necessarily fit neatly with the nature of this
16 company that's in front of me. Again, this is not the only
17 case of this nature that's before the courts or even in my
18 court. So I hear you on the issues and the Court will be
19 sensitive to those issues, and we'll balance those
20 considerations.

21 I'm likewise aware that the SEC appears today
22 as -- again, as Ms. Scheuer noted from her point of view or
23 her view is that they're the largest contingent creditor in
24 the case. I get it, but that also -- the fundamental nature
25 of a Chapter 11 case is often that stakeholder is a

1 stakeholder and a creditor, but is also a litigation
2 adversary in pending litigation.

3 So those are considerations I'm aware of. I make
4 no comment on how the discussion plays out from here, just to
5 observe that, if it does start to go off the rails, I would
6 expect to hear from the parties on these issues. The parties
7 want information, the debtor is obliged to provide certain
8 information, but the debtor is entitled to ensure that its
9 interests and those of other stakeholders are not harmed by
10 the exchange of that information. And one of the luxuries I
11 have in this job is able and experienced professionals that
12 have done this particular dance before, and I would expect
13 counsel to be able to handle most of that. And, again, I'll
14 be available to assist that process if it starts to go
15 sideways.

16 Why don't we take five minutes, you can have your
17 discussion about any open issues on the form of order, and
18 then we can reconvene.

19 Stand in recess.

20 (Recess taken at 3:34 p.m.)

21 (Proceedings resumed at 3:50 p.m.)

22 THE COURT: Please be seated. Ms. Liou, how are
23 we doing?

24 MS. LIOU: Your Honor, for the record, Jessica
25 Liou on behalf of the debtor. We are in discussions with the

1 SEC and I think we have a resolution that could work. So we
2 do need some time, however --

3 THE COURT: Of course.

4 MS. LIOU: -- to type up the language, and then
5 get it in front of the SEC and have them run it up the
6 proverbial chain to make sure it's okay with them. However,
7 we do want to try to get the interim Treasury management
8 order entered. So I have a proposal for you and, if that
9 doesn't work, then we have an alternative as a backup.

10 So our proposal is that we take a very short
11 second break because I understand we may be your last matter
12 for today --

13 THE COURT: God bless.

14 (Laughter)

15 MS. LIOU: Yes. And, unfortunately, we are going
16 to potentially keep you here a little longer, but I would
17 like to try to resolve the issue --

18 THE COURT: I have no problem with that.

19 MS. LIOU: -- and we can come back at like, you
20 know, maybe 4:30, 4:45.

21 THE COURT: Sure.

22 MS. LIOU: Okay.

23 THE COURT: Let's do 4:30.

24 MS. LIOU: Okay -- well, I think Ms. Scheuer
25 needs --

1 THE COURT: Let me ask you a question --

2 MS. LIOU: Yes.

3 THE COURT: -- in terms of timing -- yeah, because
4 you've got to go up a chain. Again, in a typical case, we'd
5 be talking about not a cash management, we would be talking
6 about a DIP order and whether or not that order needs to be
7 entered today in order to fund payroll or something else. Is
8 there -- is that what we're talking about? Is there an
9 issue -- is there an urgency that requires an order entered
10 today because, as a practical matter, the markets are closing
11 and the wires are occurring.

12 MS. LIOU: Right, and we obviously don't have the
13 wiring issue here.

14 THE COURT: Yes.

15 MS. LIOU: We are in the process of fairly
16 advanced talks with a potential banking partner. Obviously,
17 we'd love the ability to move forward with that, if we can,
18 and then we may have some vendor obligations coming due, but
19 I'm looking over at Mr. Leto to see if there are any --

20 THE COURT: Yeah, I --

21 MS. LIOU: -- okay.

22 THE COURT: -- I think I -- look, I'm open. I
23 would be happy to have the parties revise and send an order.

24 MS. LIOU: Yes.

25 THE COURT: If there's not a difference between

1 today and tomorrow morning that I'm indifferent --

2 MS. LIOU: Right.

3 THE COURT: -- but I think -- let me hear from Ms.
4 Scheuer.

5 MS. LIOU: Yeah, so I --

6 THE COURT: Oh, okay.

7 MS. LIOU: -- just wanted to say that our back-up
8 plan is that we can try to work through the language and
9 submit it hopefully, if we are able to come to a consensual
10 resolution, tomorrow, or we take you up on your invitation to
11 call you --

12 THE COURT: Sure.

13 MS. LIOU: -- to try to resolve the issue so that
14 we can get the order entered.

15 THE COURT: Ms. Scheuer?

16 MS. SCHEUER: Thank you, Your Honor. So the
17 debtors have proposed tuned language, you know, I will have
18 to run it up the chain. I don't know at this stage whether
19 it will be acceptable or not, but certainly happy to -- you
20 know, to try and see what we can do in half an hour or, you
21 know, come back --

22 THE COURT: Yeah. Well, let me ask, there are a
23 bunch of ways to skin this cat. I am here until 5:00, I
24 would be happy to allow you that opportunity. I guess the
25 one question I'm asking in terms of process is the basic

1 question: Is there an urgency to having an order with my
2 signature on it this evening?

3 If an order is -- if something is sent in under
4 certification tonight or tomorrow morning, you can -- I've
5 already reviewed what you have given me, there is zero chance
6 I will have any issue in terms of agreed reservation or
7 protective language that the Securities Exchange Commission
8 has agreed to with the debtor. So that order is going to get
9 entered, it's just a question, frankly, of -- I know parties
10 may be traveling, et cetera. If you want an order tonight
11 and you're going to hand me a marked-up order, that's pretty
12 old school, I haven't done that in a while --

13 (Laughter)

14 THE COURT: -- but that would be fine, or if the
15 parties want to confer -- and, again, I'm sensitive to Ms.
16 Scheuer's comment that, you know, some of her colleagues are
17 on the phone and likely are going to want to see that
18 language just to make sure that there's nothing that they're
19 concerned about.

20 So I'm really at your pleasure. Do you want to
21 reconvene in 40 minutes or do you want to presume that the
22 wordsmithing can get done, we'll take it under certification,
23 and if not, then we'll get on the phone and we'll talk about
24 whatever the open issue is.

25 MS. LIOU: No, Your Honor, if this is going to

1 hold over until tomorrow, that is perfectly fine with us. I
2 think we can --

3 THE COURT: Okay, why don't we do this. Unless
4 there's an objection, I will do the following.

5 Before me is what has been called the Treasury
6 motion, I am prepared to grant that motion. I'm satisfied
7 that the relief requested is appropriate and warranted. As
8 Ms. Liou noted, it did fall into five buckets, and that
9 structure was actually helpful for me to understand. And
10 from the colloquy with Ms. Richenderfer, it's clear that
11 we're kind of looking at this the same way, which is a cash
12 management motion and a bank account motion, which is
13 typically not controversial. We don't have a bank account
14 here, although I think you're telling me you're hoping you
15 do. And that may be part of the language that the parties
16 are going to noodle through, but sort of the three-body
17 problem, we've got too many moving parts.

18 The relief requested is certainly appropriate.
19 The debtor needs to be able to operate and to fund whatever
20 operations it does, and the mechanics of that process are
21 laid out in the motion and are appropriate.

22 To the extent that there are issues, they relate
23 primarily to requests for disclosure and education from the
24 part of the United States Trustee. And then from the SEC, I
25 imagine most of it is just essentially a reservation to

1 ensure that their rights aren't prejudiced by entry of an
2 order in this proceeding that might have an impact that's not
3 necessarily intended or expected or acceptable to the SEC.
4 That's a drafting exercise.

5 But the motion itself is granted, subject to the
6 parties finalizing the language. And as I said, if I
7 understand the scope of the dialogue that you're having, the
8 chances that I would stand in the way of that or have issues
9 with revisions that you are currently noodling through are
10 about zero. If there is -- and, again, I appreciate the
11 urgency of this. So, again, if there is a problem that is
12 insuperable, then get me on the phone and we'll be able to
13 noodle through because, again, we are talking about an
14 interim order that is appropriate and necessary but needs to
15 have sufficient safeguards in it to reflect the interim
16 nature of it and the rights of the parties that are affected.

17 MS. LIOU: Yes, we appreciate that, Your Honor. I
18 do want to clarify for the record in that I think the SEC's
19 concerns run a little broader than just a reservation of
20 rights, this new concern that was raised at this hearing. So
21 we are trying to resolve it, but it deals primarily with
22 respect to the use of the LUNA 2 digital asset. So --

23 THE COURT: Okay. Well --

24 MS. LIOU: -- I think we can -- again, I think
25 we'll hopefully get there, but I didn't want you to think

1 that it was akin to wordsmithing of the original reservation
2 of rights that they proposed.

3 THE COURT: Okay. Well, no, and I appreciate your
4 clarification. It was actually -- that was kind of my
5 reaction when Ms. Scheuer identified the concern, it seemed
6 to me that that should be a discussion that the parties
7 should have offline --

8 MS. LIOU: Absolutely.

9 THE COURT: -- and not necessarily in front of me.
10 And I'm happy to allow that discussion to continue, but it
11 would seem to me that resources are best served by rather
12 than having you do it in the hall, unless you want to, I
13 would look for that under certification or, if need be, to
14 deal with the parties if there's an issue.

15 But in terms of the record for purposes of today,
16 the motion is well founded and would be granted subject to
17 preparation of a satisfactory form of order, all rights being
18 reserved until that order is either agreed to or ruled upon
19 by the Court after a hearing. Okay?

20 MS. LIOU: Thank you very much, Your Honor.
21 That's wonderful.

22 THE COURT: Very good, Ms. Liou. So that covers
23 us for the Treasury motion.

24 Ms. Berkovich, do we have anything else this
25 afternoon?

1 MS. BERKOVICH: Nothing else. Thank you, you and
2 the Court for your time this afternoon.

3 THE COURT: All right. With that, we will stand
4 in recess. I'll look for the certification. I think the
5 other orders may have already been entered; if not, that will
6 happen this afternoon. I appreciate everyone's time and the
7 education, and I will look forward to seeing you in just a
8 few weeks' time.

9 With that, we stand in recess. Thank you,
10 Counsel.

11 COUNSEL: Thank you, Your Honor.

12 (Proceedings concluded at 3:59 p.m.)

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CERTIFICATION

2 We certify that the foregoing is a correct
3 transcript from the electronic sound recording of the
4 proceedings in the above-entitled matter to the best of our
5 knowledge and ability.

7 | /s/ William J. Garling

February 1, 2024

8 | William J. Garling, CET-543

9 Certified Court Transcriptionist

10 | For Reliable

1

12 || /s/ Tracey J. Williams

February 1, 2024

13 Tracey J. Williams, CET-914

14 | Certified Court Transcriptionist

15 | For Reliable

1

17 || /s/ Mary Zajaczkowski

February 1, 2024

18 | Mary Zajaczkowski, CET-531

19 | Certified Court Transcriptionist

20 | For Reliable

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